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## SHARES WITHOUT NOMINAL OR PAR VALUE.

A JOINT-STOCK corporation necessarily must have some capital, and it must have shareholders; and, for obvious reasons of policy, it is desirable that the amount of capital which a corporation must have before incurring indebtedness and which may not be impaired by the declaration of dividends should be fixed definitely by its charter or articles of association. However, it is not necessary that the amount of capital should be fixed by reference to the nominal or par amount of the shares issued by the corporation, and it is not necessary that the shares should purport to represent specified sums of money contributed to the capital.

The customary scheme of corporate organization, under which the capital of the corporation is supposed to be fixed by the nominal or par amount of its outstanding shares and the shares are supposed to represent specified sums contributed to the capital, has not worked well in practice, except as applied to corporations, like banking corporations, whose business is to deal in money, credits, and securities, and whose assets are kept in liquid form. In most cases, the capital, or a large part of the capital, of a corporation is invested permanently in fixed plant or machinery which cannot again be converted into cash, and whose value, in great measure, depends upon the profitableness of the company's business. For many years the custom has prevailed of issuing paid-up shares of such corporations in consideration of property taken at a valuation largely in excess of its money value. Under the laws of some of the states neither the subscription nor the payment of the whole amount of the nominal share capital of a corporation is a condition precedent to its right to engage in business and to incur debts. In some cases corporations have even been authorized by law to issue their paid-up shares at a discount, or, in other words, to disregard the statements in the charter and in the share certificates as to the amount of the company's capital and the amount of the several shares. Moreover, some corporations are formed to invest their capital in wasting properties, like mines, and to redistribute among their shareholders the proceeds of these properties

without making a suitable reserve for depreciation. For these reasons the nominal amount of the capital of a corporation, other than a banking corporation, rarely indicates the amount of its actual capital, or the amount originally contributed by its shareholders.

It often happens that a corporation having an established business finds itself in need of capital and desires to raise the required capital by selling additional shares at their market value. However, if the market value of the shares should be less than their nominal or par amount, the corporation would be precluded from raising money by selling shares, inasmuch as they could not be issued lawfully for less than their nominal or par amount, while, of course, no one would be willing to pay more than their actual or market value. The corporation thus would be forced to raise the required capital by borrowing and increasing its indebtedness, although it would be sound business policy and in the interest of its creditors as well as its shareholders to raise the needed capital by selling shares at their market value.

To meet such a situation, and also to obviate the supposed evils of "stock watering," a statute was passed in New York for the creation of corporations with shares having no nominal or par value.<sup>1</sup> A corporation formed under this statute must state in its certificate of incorporation the amount of capital with which it

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<sup>1</sup> Act of April 15, 1912, being §§ 19 to 23 of the Stock Corporation Law.

As many of the existing statutory provisions and rules of law relating to the capital stock and shares of corporations should be made applicable to corporations organized under the new law with shares having no nominal or par value, the following important provision was inserted in the New York statute: "§ 23. *Amount of capital stock and of shares within meaning of other laws.* For the purpose of any rule of law or of any statutory provision (other than the foregoing sections nineteen, twenty, twenty-one and twenty-two) relating to the amount of the capital stock of a corporation or the amount or par value of its shares, the aggregate amount of the capital stock of any such corporation formed pursuant to section nineteen hereof shall be deemed to be the aggregate amount specified in the certificate or amended certificate of incorporation or of reorganization, as the amount of capital with which the corporation will carry on business; the amount of the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate or such amended certificate; and the amount or the par value of each other share shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate or in such amended certificate in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal."

will carry on business, and it is prohibited from engaging in business or incurring debts until the stated amount of capital shall have been received by the corporation in money or in property at its actual value. However, the shares issued by the corporation would have no nominal or par value, and the corporation would be permitted to issue and sell them at their actual or market value.

The policy of the New York statute is sound. It recognizes that shares in a corporation represent only aliquot interests in its capital, whatever that may be, and that their nominal or par value is no indication of their actual value or of the actual capital of the corporation. It requires the amount of the actual capital of a corporation formed under the law to be stated in the certificate of incorporation, and imposes a severe penalty upon the directors in case of the creation of indebtedness before receiving the prescribed capital. Thus it furnishes to creditors and to the public generally a measure of protection greater than that furnished by the generally prevailing incorporation laws. At the same time it is in furtherance of sound business methods by enabling corporations to raise money by selling shares at their actual value instead of by borrowing or otherwise increasing their indebtedness.

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